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the court said that only when the testator resides outside the state at the time of his death are assets necessary for granting letters of administration. The question may arise as one of practical importance where a resident has died and left no property or rights which may be ascertained by the court even to make a prima facie showing of assets, as for example, the deceased may be a mortgagee of real estate fully paid but not discharged upon the record, or a creditor may believe there are hidden assets. The following language of Mr. Justice Gray in *Pinney v. McGregory*,⁹ seems to indicate that a court of probate will always grant such letters where administration is either necessary, or advisable or desirable: "To limit the power of granting administration to cases in which the goods are or the debtor resides in the Commonwealth at the time of the death of the intestate would be to deny to the creditors and representatives of the deceased, whether citizens of this or of another state, all remedy whenever goods are brought into this state, or a debtor takes up his residence here, after the death of the intestate." The reasoning of the cases seems to establish clearly that if the decedent resides in the jurisdiction it is not necessary to inquire whether there is property, and that even though the decedent is a non-resident a court may grant letters if there is a valid purpose to be served other than the distribution of assets.

C. R. S.

MASTER AND SERVANT: INTERFERENCE BY THIRD PERSONS: LAWFULNESS OF LABOR UNIONS.—Under what circumstances are the activities of a labor union lawful when they result in the severance of the relationship of master and servant? This question is brought up in the case of *Mitchell v. Hitchman Coal Company*.¹ The coal company ran a non-union mine, contracting with its employees not to hire union men, the employees in turn contracting, individually, that they were non-union men, and that if they should join any union they would withdraw from the company's employ. The Federal District Court for West Virginia held that the officials of the United Mine Workers of America could not be enjoined from inducing these employees by peaceable persuasion to join the union, although thereby the relation of master and servant was severed.

It is settled law that one who knowingly induces the breach of a subsisting contract of employment, unless he has legal justification,² is guilty of an actionable wrong.³ But it is not necessary

⁹ (1869), 102 Mass. 186, 193.

¹ (May 28, 1914), 214 Fed. 662.

² *Wharton v. Jossey* (1872), 46 Ga. 578.

³ *Lumley v. Gye* (1853), 2 El. & Bl. 216; *Walker v. Cronin* (1871), 107 Mass. 555; *Haskins v. Royster* (1874), 70 N. C. 601, 16 Am. Rep. 780; *Flaccus v. Smith* (1899), 199 Pa. 128, 48 Atl. 894, 54 L. R. A. 640, 85 Am. St. Rep. 779; *Brown Hardware Co. v. Indiana Stoveworks* (1903),

that there be a contract, or a fixed term of employment; there may be a contract voidable at will, or a service from day to day, so that either party may lawfully break off the relationship. In this latter case, it is equally well-settled law that one who has knowledge of the relationship,⁴ and yet who maliciously, that is, without justifiable cause,⁵ brings about its severance, to the actual injury of the plaintiff,⁶ is liable to an action by the party injured.⁷

The same principles apply to labor unions. They have no better right than have individuals to induce the breaking of contracts, or to persuade, without legal justification, employees to quit their service. Hence, it follows, and the principal case so holds, that a labor union may call strikes and induce workmen to leave their service, provided:

1. That no contract is thereby broken.⁸ It is to be noted that no contract was broken in the principal case. The men did not contract not to join a union, but simply that if they did so, they would leave the company's employ.⁹

2. That both their general and immediate purposes be lawful. Though there are numerous expressions in the cases to the contrary,¹⁰ it is now held by abundant authority that a labor union, organized to advance the welfare of its members and of workingmen in general, in competition with capital, is pursuing a lawful

96 Tex. 453, 73 S. W. 800; *Employing Printers' Club v. Dr. Blosser Co.* (1905), 122 Ga. 509, 50 S. E. 353, 69 L. R. A. 90, 106 Am. St. Rep. 137, accord. *Boulter v. Macauley* (1891), 91 Ky. 135, 15 S. W. 60, 34 Am. St. Rep. 171, 11 L. R. A. 550; *Boysen v. Thorn* (1893), 98 Cal. 578, 33 Pac. 592, contra.

⁴ *Butterfield v. Ashley* (1850), 6 Cush. 249; *Clark v. Clark* (1899), 63 N. J. Law 1, 42 Atl. 770.

⁵ *Chipley v. Atkinson* (1887), 23 Fla. 201, 1 So. 934, 11 Am. St. Rep. 367; *Employing Printers' Club v. Dr. Blosser Co.*, supra, note 3; *Globe and Rutgers Fire Ins. Co. v. Firemen's Fund Ins. Co.* (1910), 1 So. 454.

⁶ *Bird v. Randall* (1762), 3 Burr. 1352; *Chipley v. Atkinson* (semble), supra, note 5.

⁷ *Chipley v. Atkinson*, supra, note 5; *Frank v. Herold* (1901), 63 N. J. Eq. 443, 52 Atl. 152; *Employing Printers' Club v. Dr. Blosser Co.* (semble), supra, note 3; *Thacker Coal and Coke Co. v. Burke* (1906), 59 W. Va. 253, 53 S. E. 161, 5 L. R. A. (N. S.) 1091.

⁸ See cases, note 3.

⁹ Query: what is the effect of a contract by the employee with his employer not to join a union? If it is for a fixed period, irrespective of employment, it would be against public policy. If only during an employment which is from day to day, it would avail the employer nothing, for the employee might leave at any time, and then join a union without breaking his agreement not to do so. But it is probable that, if there were a fixed term of employment, and an agreement by the employee that he would not join a union during that period, a union inducing such employee to join the union and break his contract would be guilty of an actionable wrong.

¹⁰ *Old Dominion Steamship Co. v. McKenna* (1887), 30 Fed. 48; *Vegelahm v. Guntner* (1897), 167 Mass. 92, 44 N. E. 1077, 35 L. R. A. 722; *Frank v. Herold* (1902), 63 N. J. Eq. 443, 52 Atl. 152.

purpose.¹¹ It is this lawful purpose which gives the union the necessary legal justification.

3. That it employ no unlawful means, such as force, threats, or coercion.¹² It is well-settled that peaceable persuasion directed to persons willing to listen (which was the only means adopted in the principal case) is a lawful means.¹³

H. J. W.

MUNICIPAL CORPORATIONS: OPERATION OF WATER SYSTEM BY MUNICIPALITY: UNREASONABLE REGULATION.—The city of Los Angeles by article one, section seven of its charter is given the power "to provide for supplying the city and its inhabitants with water", and by article eighteen, section one hundred and ninety-two, the power to fix rates by ordinance is given it. The city in exercising this power passed an ordinance providing that "All water rates shall be charged against property on which it is furnished and against the owner thereof, and if for any cause any sums owing therefor become delinquent the water shall be cut off, and in no case shall it be turned on to the same property until all such delinquencies shall have been paid in full. No change of ownership or occupation shall affect the application of this section."

In *Nourse v. City of Los Angeles*¹ the power of the city to pass the ordinance was decided in the negative. The court holds that a municipality in operating a water system for the purpose of supplying its inhabitants with water acts not in its governmental and sovereign capacity as an agent of the state, but in its proprietary capacity, engaged in a service for its profit, although the public may be incidentally benefited. Acting in such capacity a city is governed by the same rules that apply to any private corporation in a like occupation. This has been repeatedly held.²

¹¹ *Commonwealth v. Hunt* (1842), 4 Met. 111; *State v. Stewart* (1887), 59 Vt. 273, 9 Atl. 559, 59 Am. Rep. 710; *Rogers v. Evarts* (1891), 17 N. Y. Sup. 264; *Jordahl v. Hayda* (1905), 1 Cal. App. 696; *Pickett v. Walsh* (1906), 192 Mass. 572, 78 N. E. 753; *Parkinson v. Building Trades Council* (1908), 154 Cal. 581. It must be remembered that, though the general purpose of a union may be lawful, its immediate purpose may be unlawful (*Employing Printers' Club v. Dr. Blosser Co.*, supra, note 3), in which case it will make itself legally liable to an injured employer.

¹² *Old Dominion Steamship Co. v. McKenna*, supra, note 10; *State v. Stewart*, supra, note 11; *Vegelahn v. Guntner*, supra, note 10; *Frank v. Herold*, supra, note 10; *Jordahl v. Hayda*, supra, note 11.

¹³ *Rogers v. Evarts*, supra, note 11; *Karges Furniture Co. v. Amalgamated Woodworkers* (1905), 165 Ind. 421, 75 N. E. 877, 2 L. R. A. (N. S.) 788; *Pierce v. Stablemen's Union* (1908), 154 Cal. 581, 98 Pac. 1027; *Jones v. Maher* (1909), 116 N. Y. Sup. 180.

¹ (Sept. 8, 1914), 19 Cal. App. Dec. 329.

² *South Pasadena v. Pasadena Land and Water Co.* (1908), 152 Cal. 579, 93 Pac. 490; *Wagner v. City of Rock Island* (1893), 146 Ill. 139, 34 N. E. 545, 21 L. R. A. 519; 1 *Dillon Mun. Corp.* 27; *City of Montgomery v. Green* (Ala., 1913), 60 So. 900; *People v. Schlitz Brewing Co.* (Ill., 1913), 103 N. E. 555.